

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NEUSTAR, INC,)	
)	
PETITIONER,)	
)	
v.)	No. 15-1080
)	
FEDERAL COMMUNICATIONS COMMISSION)	
and UNITED STATES OF AMERICA,)	
)	
RESPONDENTS.)	

**OPPOSITION OF THE FEDERAL COMMUNICATIONS
COMMISSION TO NEUSTAR, INC.’S MOTION
TO EXPEDITE BRIEFING AND ORAL ARGUMENT**

The Federal Communications Commission opposes Neustar, Inc.’s Motion to Expedite Briefing and Oral Argument. As set forth in the Motion to Dismiss that the Commission is filing concurrently,¹ the challenged *Order*² in this case is not a final order within the Court’s authority to review. But even were the *Order* final, Neustar has not come close to satisfying the stringent standard for expedition.

¹ Motion Of The Federal Communications Commission To Dismiss For Lack Of Finality Or, In The Alternative, To Hold In Abeyance, filed May 21, 2015 (*Motion to Dismiss*).

² Order, *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration; Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract Management; Telephone Number Portability*, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116, FCC 15-35 (adopted Mar. 26, 2015) (*Order*).

ARGUMENT

The standard for obtaining expedited relief is high. “The movant must demonstrate that the delay will cause irreparable injury and that the decision under review is subject to substantial challenge. The Court also may expedite cases in which the public generally, or in which persons not before the Court, have an unusual interest in prompt disposition. The reasons must be strongly compelling.” *D.C. Circuit Handbook of Practice and Internal Procedures* 33 (2013).

Neustar has not met this exacting standard. Neustar states that it has a contract with the Number Portability Management, LLC (NAPM), the industry group that contracts with and oversees Neustar’s provision of number portability services, “through September 30, 2016,” and that “[t]he contract will automatically renew at current prices for consecutive one-year periods unless the NAPM provides a notice of non-renewal” within a specified time period. *Motion to Expedite* at 6. Thus Neustar can hardly claim that its role as the Local Number Portability Administrator (Administrator) is imminently threatened. Neustar nevertheless offers three arguments to support its Motion to Expedite. None demonstrates why Neustar’s case should be moved ahead of other pending cases on this Court’s docket. The most important point is that, as the Commission explains in its *Motion to Dismiss*, this case is not now reviewable, but even if it were, the case should be held in abeyance because of the multiple contingencies

that must be resolved before, if ever, Neustar could lose its status as Administrator. A case that should be delayed or dismissed should not, by definition, be expedited. Moreover, Neustar's arguments do not justify expedition.

1. Neustar first contends that it will be harmed in various respects if review is not expedited. It asserts, for example, that it is already incurring the costs of transitioning to a new Administrator, and that the transition costs "are likely to accelerate." *Motion to Expedite* at 7. And it claims to be "required to participate in as-yet-undefined transition activities ... that, if not satisfied, could subject the company to unspecified financial penalties or sanctions." *Id.* at 8-9. But Neustar is "required to participate" in transition activities *because it agreed by private contract to do so*. And, per that contract, Neustar will be compensated for transition services "on a cost-plus basis." *Id.* at 6. *See also id.*, Exh. A (Decl. of William Reidway) at ¶ 8 ("Neustar will be compensated for [transition] services by contract"). Neustar cannot claim that it is harmed by complying with (and receiving the benefits of) the private bargain it negotiated.

Neustar's other claims of harm are equally insubstantial. It contends that, "[w]ith the potential transition looming, [it] could be asked to freeze its current system in place." *Motion to Expedite*, Exh. A (Reidway Decl.) at ¶ 9. Neustar gives no indication, however, as to who would make such a request or how likely it is to occur. And Neustar promises that, throughout the transition, it "will do everything

that it can to ensure that the [Number Portability Administration Center] continues to provide the flawless level of service necessary and appropriate to provide critical telecommunications infrastructure.” *Id.* at ¶ 11.

Neustar also asserts that “the possibility of transition” makes it more difficult for Neustar to attract and retain top personnel. *Motion to Expedite* at 9. But Neustar asserts only that its personnel may “take advantage of opportunities in Neustar’s other lines of business.” *Id.*, Exh. A (Reidway Decl) at ¶ 10. It is difficult to see how Neustar is harmed by such internal transfers. Moreover, Neustar does not offer evidence that it is in fact losing staff or having difficulty recruiting new staff as a result of the *Order*. In light of the fact that Neustar’s contract to provide number portability services will continue *at least* through September 2016, and that Neustar expects the transition to take approximately two years, its unsubstantiated claim about imminent staff migration is implausible, and does not justify expedited scheduling.

Neustar’s contract to serve as the Administrator continues for at least 15 months, and Neustar is being compensated for those services. The transition to a new LNPA will, according to Neustar, take approximately two years, and Neustar is being compensated for transition services as well. There is simply no harm to Neustar that merits expedited consideration.

2. Neustar’s second basis for seeking expedited judicial review is that it allegedly “will raise substantial challenges to the FCC’s” Order. *Motion to Expedite* at 9. Neustar’s general description of its intended challenges—that the Commission unlawfully dispensed with notice-and-comment rulemaking, violated “neutrality” requirements in selecting Telcordia as the next Administrator, and failed adequately to consider transition costs in its analysis (*see id.* at 9-11)—does not establish that those challenges are “substantial.” None of these challenges is new to the Commission; each was fully considered and rejected. *See Order* ¶¶ 17-30 (rejecting, point by point, Neustar’s claims that the Commission improperly failed to conduct a rulemaking); ¶¶ 170-188 (rejecting Neustar’s assertion that Telcordia could not serve as a neutral Administrator, subject to specified conditions); ¶¶ 146-159 (acknowledging the risks and costs associated with transitioning to a new Administrator and concluding that, notwithstanding, Telcordia could provide the required services and, on balance, offered the best value). Neustar’s intent to reassert these arguments before the Court hardly weighs in favor of expedition.

3. Neustar argues finally that expedited review would serve the public interest by minimizing the effort and expense to implement a transition that may not occur if Neustar prevails on the merits. Neustar further asserts that, even if its challenge is unsuccessful, “parties benefit from eliminating uncertainty.” *Motion to*

Expedite at 12. Again, Neustar has offered no reason why this case merits special, expedited treatment. The claim that swift resolution and certainty would benefit the parties is one that could be made in virtually every legal challenge to agency action. If the standard for expedition was that easy to meet, almost every case would be eligible for expedited treatment.

Neustar contends that the transition will take approximately two years, and that “[a]t first, the costs of transition will be borne by Telcordia,” the NAPM, and Neustar. *Motion to Expedite* at 8. Contrary to that unsupported assertion, there is no reason to believe that third parties will bear significant expenses related to the transition before the Court has had an opportunity to consider the merits of the case even without expediting the schedule. In addition, the Commission has directed the NAPM to “ensure that the transition is as smooth and efficient as possible for smaller provider[s].” *Order* at ¶ 154. There is thus no need to expedite the briefing schedule to protect the interests of small providers.

CONCLUSION

Neustar’s Motion to Expedite Briefing and Oral Argument should be denied.

Respectfully submitted,

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May 21, 2015

15-1080

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v.

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CERTIFICATE OF SERVICE

I, Lisa S. Gelb, hereby certify that on May 21, 2015, I electronically filed the foregoing Opposition of the Federal Communications Commission to Neustar, Inc.'s Motion to Expedite Briefing and Oral Argument with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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